

IEERB 2014 Conference

IEERB Overview

- What is IEERB?
 - Neutral agency administering teacher collective bargaining law.
 - Promotes harmonious and cooperative relationships between teachers and the school corporations they serve.
- What does IEERB do?
 - Research
 - Representation cases
 - Unfair practice cases
 - Impasse procedures

Collective Bargaining -

How do you start?

- What is collective bargaining?
- When do we start?
- What do we need to start?

What are you bargaining?

- Salary, wages, salary and wage related fringe benefits
 - Compensation models
- Grievance procedures
- What are you not bargaining?

What do you need to know about the school's financial information?

- Deficit financing prohibited
- Know and understand
 - General fund revenue
 - Budget
 - History of revenues and expenditures

What goes into the CBA?

- **All** agreed-upon subjects of bargaining
- Parts of CBA required to form a contract
 - Recognition clause
 - CBA term
 - Definitions
 - Ratification
- Note: SBOA rubric

You settled – now what?

- MUST be signed & ratified by both parties on or after August 1
- Must be sent to ratifiedcontract@ieerb.in.gov and uploaded to Gateway by October 1 (October 10 if notice to IEERB)
- Must be posted on school corporation's website




2014 BARGAINING/IMPASSE TIMELINE

*****These dates will not be altered for individual school calendars.*****

Pre 8/1	Informal negotiations may be held
8/1	DOE Estimate of General Fund Revenue
8/1	<u>FORMAL COLLECTIVE BARGAINING PERIOD BEGINS</u>
~9/15	Fall ADM count
10/1	<u>IMPASSE PERIOD BEGINS</u>
10/3	Bargaining Status Forms Due
10/10	Settled CBAs Due
~10/15	DOE Certification of Bargaining Revenue
12/31	<u>IMPASSE PERIOD ENDS</u>

For more information, visit www.in.gov/ieerb

Collective Bargaining

- informal
 - formal
 - submission of ratified contract or declaration of impasse
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Mediation

- appointment
 - 1-3 mediation sessions
 - submission of ratified contract or exchange of LBOs
- 

Fact Finding

- appointment
- investigation & hearing
- report choosing one or joint LBO as the parties' CBA

What you can expect from IEERB **during impasse**

- Bargaining Status Form
- Notices regarding impasse
- Ad Hoc Appointments
- Resources available

What IEERB expects from you during impasse

- Bargaining Status Form
- Communication regarding status
- Compliance with timelines/process

What if you settle?

- Parties can settle starting August 1 and prior to a fact finder appointment by submitting a **ratified** CBA to IEERB.
 - Note: If impasse already declared, the parties will receive an End of Impasse Notice.
- Parties can settle after a fact finder appointment by submitting a joint LBO to the fact finder

Mediation Overview

- What is the process?
 - Appointment
 - Length
 - End of Mediation
- What are best practices?
 - Set first session early
 - Take it seriously
 - Leave time for ratification/LBO preparation

Last, Best Offers (LBOs)

- What are they?
- What is entailed?
- LBO compliance
- Joint LBOs
- What is the fact finder/financial consultant looking for?

Fact Finding Overview

- What is the process?
 - Appointment
 - Investigation
 - Hearing
 - Report
- What are best practices?
 - Take process/timelines seriously
 - Support & Explain LBO

Impasse Costs

- Split by parties
- Payment to IEERB
- Avg. Mediation Cost per party in 2013: \$761.78
- Avg. Fact Finding Cost per party in 2013:
\$3,060.00





Subjects of Discussion

IC 20-29-6-7

A school employer **shall discuss**

- Curriculum development and revision
- Selection of curricular materials
- Teaching Methods
- Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees .

- Student Discipline
- Expulsion or Supervision of Students
- Pupil/teacher ratio.
- Class size or budget appropriations
- Safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law.
- Hours

What Was Deleted?

- Working Conditions
- Items included in the 1972-73 agreements between an employer school corporation and the school employees organization continue to be bargainable

What Was Added?

- Evaluations
- Safety Issues
- Hours

UNLAWFUL DEFICIT FINANCING

IC 20-29-6-3

- Sec.3.(a) It is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employers current year actual general fund revenue.
- Sec.3.(b) A contract that provides for deficit financing is void to that extent, and an individual teacher's contract executed under the contract is void to that extent.

Other Relevant Agencies/Laws

- Laws
 - Open Door Law
 - Access to Public Records Act
 - Wage payment laws
 - Health Insurance Law
- Agencies
 - State Board of Education
 - State Board of Accounts
 - State Personnel Department

IEERB Resources

- IEERB website
 - Bargaining Handbook
 - IEERB Search
 - Bargaining Timeline
 - Bargaining Status Form
 - LBO Requirements/Sample
- Gateway
 - Access to state-wide information on teacher salary, wages, benefits

Representation

560 IAC 2-2 *et seq.*

Ind. Code 20-29-5 *et seq.*

Chris Greisl, Esq.

Director of Conciliation

Introduction

- The Bargaining Unit
- The Exclusive Representative
- The Election Process

*****Any change to the composition of a bargaining unit or exclusive representative MUST come through IEERB*****

Determining the Bargaining Unit

- (1) Parties agree to the composition of the unit
- (2) Parties do not agree or employee in the proposed unit files a complaint about the unit with the Board
 - The Board shall determine the proper unit based upon briefs and papers filed unless a hearing is requested. Board's decision must be based on but not limited to:
 - (1) Efficient Administration of school operations; (2) The existence of a community of interest among school employees; (3) The effects on the school corporation and school employees of fragmentation of units; and (4) Recommendations of the parties involved

Changing the Composition of the Unit

- Unit Amendment
 - When a position has been *newly created* and is to be added or excluded from the existing unit
- Unit Clarification
 - When an *existing position* is to be added or excluded from the existing unit
- If the parties agree to the amendment/clarification → The School must post notice for 30 days describing the unit, the proposed amendment or clarification
 - If no objection during the notice period → Send to IEERB for certification
- If a school employee effected by the amendment/ clarification objects to the amendment/clarification, the Board shall determine the unit by using the same procedures used in original determinations of the unit

Determining the Exclusive Representative

- School Employee Organization
 - An organization that has school employees as members and one of its primary purposes is representing school employees in dealing with their school employers
- A School Employer may voluntarily recognize a school employee organization if there is not currently a school employee organization in place
 - Voluntary Recognition → Notice posted in all school buildings for 30 days. If no challenge during the notice period → Send to IEERB for certification

Challenging the Exclusive Representative

- (1) School Employee Organization files a Petition
 - Asserts that 20% of the employees in the appropriate unit wish to be represented for collective bargaining by the school employee organization OR
 - 20% of the employees in the unit believe the designated exclusive representative is no longer the representative of the majority of school employees in that unit
- (2) School Employer Files a Petition
 - Asserts that one or more organizations have presented a claim to the school that it is to be recognized as the exclusive representative OR
 - The School Employer has good faith doubt that the previously certified exclusive representative represents a majority of school employees in the unit.
- (3) 20% of School Employees in a unit files a Petition
 - Asserts that 20% of the school employees in the unit wish to be represented by another school employee organization OR
 - Asserts that the designated exclusive representative no longer represents a majority of school employees in the unit

Notice of Pending Petition

- After the filing of a petition or receipt of a petition filed by another party, the School Employer shall post notice for 10 days in places where notices are normally posted affecting school employees in the unit involved in the proceeding.
- Notice will describe the unit involved and the action requested, and include a statement that any interested parties may, up to 3 days prior to the hearing, advise the Board of their intention to intervene.
 - Intervenors must file a petition to intervene during the posting period.
 - No School Employee Organization will be permitted to intervene without submitting a Showing of Interest.

Showing of Interest

- Evidence that 20% of school employees in an appropriate unit either (1) wish to be represented by such school employee organization for the purpose of collective bargaining or (2) must indicate the school employees' request to decertify the designated exclusive representative by asserting it is no longer the representative of the majority of school employees in the unit.
- Evidence shall accompany the petition at the time of filing or at such time as set by the Board.
- Other evidence of probative value indicating that the requisite percentage of school employees desire representation or decertification may be considered.
- Must be in writing and signed and dated by school employees in the appropriate unit.

Investigation and Hearing

- Investigation of the Petition
 - Reasonable cause to believe that a question exists as to whether the designated exclusive representative or any school employee organization represents a majority of the school employees in that unit
 - If yes → conduct a hearing within 30 days
 - If no → Board will ask the party to withdrawal or will dismiss the petition
- Hearings
 - Investigatory → purpose is to develop a full and complete factual record upon which the case may be determined.
 - The Board or Hearing Officer will either (1) direct an election; (2) dismiss the petition; or (3) make such other disposition of the matter as deemed appropriate.

Elections

Periods of Unchallengeable Representation

- **Election Bar**: valid election held in a bargaining unit in the preceding 24 months – no petition for a subsequent election may be filed until 60 days before the second anniversary of the first ballot in the election, and no election shall be conducted until at least 24 months after the first ballot in the previous election
- **Recognition Bar**: School Employee Organization has been recognized within the proceeding 12 months
- **Pending Unfair**: Alleging School Employer violated IC 20-29-7-1(a)(2) and specifically requests an election be stayed
- **Contract Bar**: If CBA is currently in place- only file between January 15 – February 14 inclusive of the calendar year of the expiration date of the CBA.
 - *Note*: If the term of the CBA is greater than 2 years → treated as a 2-year CBA; and extensions of CBAs do not extend this period

Elections

- Conducted by secret ballot
- School Employee Organization receiving a majority of votes of all the employees in an appropriate unit
- School Employee Organization is on the ballot if it has evidenced a *Showing of Interest*
- Choice of “No representation by a school employee organization”
- Eligible Voters
 - School employees included within the consent agreement (consent election) OR
 - IEERB can determine by those employed during the payroll period immediately prior to the election (including employees who were not working due to illness, vacation, or other legitimate leave as determined by IEERB)

Elections

- School Employer is required to submit an election eligibility list
 - School Employee Organization or potential voter may challenge the list 5 days prior to the first day of polling. (List deemed final if no objections)
 - A school employee whose name does not appear on the list shall not be precluded from voting but should be challenged
- IEERB mails out the ballots and holds a polling period (14 – 30 days)
- IEERB will tabulate the ballot on the next business day.
 - Each party allowed 1 representative who must notify IEERB prior to the date of tabulation
 - Challenged ballots shall not be opened or counted but remained sealed
 - If sufficient in manner to affect the results of the election → IEERB will conduct an investigation (may include hearing and briefs) and rule upon the challenges
- Any objection to the conduct of the election shall be filed within 5 days of the initial tally of the ballots. IEERB shall investigate (may conduct a hearing).
 - If dismissed → election is certified
 - Set aside the election and direct a new election

Runoff

- When 3 choices on the ballot results in no choice receiving a majority of the votes of the total number of school employees who were eligible to vote. Runoff will contain top 2 vote getters.
- No runoff
 - (1) only two choices on the ballot; (2) all three choices receive equal votes and there are challenged ballots that would affect the election or less than all eligible voters cast valid ballots; or (3) where two choices receive equal votes and a third choice receives a higher but less than majority, there are challenged ballots that affect the election or less than all eligible voters cast valid ballots
 - If two or more receive equal votes and no challenge ballots → Dismissed

Rerun

- (1) IEERB orders a new election following the disposition of objections
- (2) an equal number of votes are cast for all three choices on the ballot
- (3) two choices receive equal votes but less than the number of eligible voters cast ballots; or
- (4) two choices receive an equal number of votes and a third choice receives a higher but less than a majority of eligible votes.
- Dismissed
 - If two choices receive equal votes and the third choice receives no votes and no challenged ballots that would affect the results and all eligible voters have voted
 - Two choices on the ballot (one being no representation) and both receive equal votes and all voters have cast valid ballots

Review by the Board

- Notice of Intent to file objections → within 15 days of:
 - Dismissal of representation petition
 - Unit Amendment/ Clarification decision where no election is ordered
 - Other representation issues decided
 - Certification of election results or certification of elections results where there are objections to the conduct of an election
- Brief and request oral argument
- Board will issue a final order → direct an election; dismiss the petition; affirm/reverse the Hearing Officer's Order and/or actions; or take other action as it deems appropriate.

Unfair Practice

Ind. Code 20-29 *et seq.*

Ind. Code 4-21.5 (AOPA)

560 IAC 2

Chris Greisl, Esq.

Director of Conciliation

Rights of School Employees

- School employees may:
 - (1) form, join, or assist school employee organizations;
 - (2) participate in collective bargaining with school employers through representatives of their own choosing; and
 - (3) engage in other activities, individually or in concert;
- to establish, maintain, or improve salaries, wages, salary and wage related fringe benefits; and other matters set forth in IC 20-29-6-4 and IC 20-29-6-5.

Responsibilities of School Employers

- School employers have the responsibility and authority to manage and direct on behalf of the public the operations and activities of the school corporation to the full extent authorized by law, including but not limited to the following:
 - (1) Direct the work of the school employer's employees
 - (2) Establish policy through procedures established in IC 20-29-6-4,5
 - (3) Hire, promote, demote, transfer, assign, and retain employees
 - (4) Suspend or discharge employees in accordance with applicable law through procedures established under state law
 - (5) Maintain the efficiency of school operations
 - (6) Relieve employees from duties because of lack of work or other legitimate reason through procedures established in IC 20-29-6-4, 5, 7
 - (7) Take actions necessary to carry out the mission of the public.

Unfair practices by school employer

- (1) Interfere with, restrain, or coerce school employees in the exercise of the rights guaranteed in IC 20-29-4.
- (2) Dominate, interfere, or assist in the formation or administration of any school employee organization or contribute financial or other support to the organization. Subject to rules adopted by the governing body, a school employer may permit school employees to confer with the school employer or with any school employee organization during working hours without loss of time or pay.
- (3) Encourage or discourage membership in any school employee organization through discrimination in regard to:
 - (A) hiring;
 - (B) tenure of employment; or
 - (C) any term or condition of employment.
- (4) Discharge or otherwise discriminate against a school employee because the employee has filed a complaint, affidavit, petition, or any information or testimony under this article.
- (5) Refuse to:
 - (A) bargain collectively; or
 - (B) discuss;with an exclusive representative as required by this article.
- (6) Fail or refuse to comply with any provision of this article.

Unfair practices by school employee organizations

- (1) Interfere with, restrain, or coerce:
 - (A) school employees in the exercise of the rights guaranteed by this article; or
 - (B) a school employer in the selection of its representatives for the purpose of bargaining collectively, discussing, or adjusting grievances.

This subdivision does not impair the right of a school employee organization to adopt its own rules with respect to the acquisition or retention of membership in the school employee organization.

- (2) Cause or attempt to cause a school employer to discriminate against an employee in violation of section 1 of this chapter.
- (3) Refuse to bargain collectively with a school employer if the school employee organization is the exclusive representative.
- (4) Fail or refuse to comply with any provision of this article.

The Complaint

- Who may file?
 - School Employer; School Employee; or School Employee Organization on behalf of a school employee(s).
- Complaint shall be in writing, signed by the Complainant(s) under oath, and served upon the Respondent(s) by certified mail or personal service
- The complaint shall include (1) name, address, and number of the person(s) making the complaint and any attorney/representative acting on complainant's behalf; (2) name, address, and number of the Respondent(s); (3) summary of facts involved and specifies the section(s) of IC 20-29-7 alleged to have been violated; and (4) a statement of the remedy being sought

Remedies

- Remedies typically include but are not limited to the following:
 - Cease and desist now and in the future
 - Rescind action and return to status quo

Hearing Examiner Appointment

IEERB Case No. U-14-01-2345

Christopher P. Greisl has been appointed Hearing Examiner for the Indiana Education Employment Relations Board in the above-referenced case. The Case Administrator is Maureen Johnson, who can be contacted at (317) 233-6620 or mjohnson@ieerb.in.gov. 560 IAC 2-6-2 requires any person representing a party to file an appearance. For information on proper filing and service, see 560 IAC 2-6-1 and 560 IAC 2-7.

The Respondent's answer to the complaint must be filed within 15 days of this appointment letter, or at such further time as may be allowed by the Hearing Examiner. A party's request for an extension of time must be made in a written motion. The request must be compliant with 560 IAC 2-6-4, state whether the extension is agreed to by the other party, and state the desired extension of time.

It is not proper for a party, or representative of a party, to engage in *ex parte* communications with a Hearing Examiner regarding any issue in the proceeding while the proceeding is pending. Pleadings and communication should be in writing and served on the other party or other party's representative simultaneously with filing with IEERB. Any questions may be directed to the Case Administrator.

Parties are encouraged to utilize mediation to facilitate settlement discussions. Parties interested in arranging mediation should jointly contact the Hearing Examiner.

Answer

- Respondent's answer shall be filed within 15 days of the Hearing Examiner's appointment or such further time as the Hearing Examiner may allow; and shall
 - (1) state the name, address, and telephone number of any attorney or representative acting on behalf of the respondent; and
 - (2) specifically admit, deny, or explain each of the facts alleged in the complaint. If the respondent is without knowledge in regard to certain alleged facts, the respondent shall so state. Such statement shall operate as a denial.
- If the answer is not timely filed or Respondent fails to specifically deny or explain any allegations of the complaint or fails to claim he is without knowledge as to any allegation in the complaint, then any such allegation shall be deemed admitted as true, unless good cause is shown to the contrary.

Mediation

- IEERB encourages all parties to utilize Mediation
- **The Hearing Examiner assigned to the proceeding shall make available to the parties, at no cost, a qualified mediator**
 - Parties may elect to use, at their own cost, an outside mediator who is (1) qualified and (2) approved by the Hearing Examiner
 - If a mediator is not selected by agreement or choice, the Hearing Examiner shall present 3 mediators from IEERB's approved list and allow for alternate striking.
- Follows the provisions for mediation under AOPA (IC 4-21.5-3.5)

Prehearing Conference

- Explore settlement possibilities
- Clarification of issues
- Rulings regarding issuance of subpoenas, discovery orders, and protective orders
- Preparation of stipulations
- Such other matters as will promote the orderly and prompt conduct of the hearing

Ex Parte Communications

- Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative law judge serving in a proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct/indirect interest in the outcome of the proceeding without notice and opportunity for all parties to participate in the proceeding.
- Use caution when writing emails

Motions

- All motions made before or after the hearing but prior to the filing of the hearing examiner's report shall be filed in writing with the hearing examiner and shall briefly state the order or relief applied for and the grounds for each motion.
- Unless otherwise stated in 560 IAC 2, a request for an extension of time shall be made at least 2 days before the deadline date, state whether the other party agrees to the extension, and state the requested extension.
- All motions, rulings, and orders shall become a part of the record.
- A Hearing Examiner's order issued on a motion shall not be appealed directly to the Board except by special permission of the Board

Dispositive Orders

- **Summary Judgment** (Ind. R. Trial P. 56)
 - After a Hearing Examiner is appointed, a party may move for summary judgment at any time as to all or any part of the issues in the proceeding.
- **Dismissal**
 - If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the Hearing Examiner, the Hearing Examiner shall make findings and conclusions in support of his ruling and forward the case to the board.

Discovery

- Follow AOPA/Indiana Rules of Trial Procedure
 - Any party may take a deposition of any person.
 - A party may file a written application for the issuance of a subpoena, which may be issued by a Hearing Examiner.
- Discovery Orders may be issued by the Hearing Examiner
 - Limit the use of discovery

Intervention

- Before the beginning of a hearing, the Hearing Examiner shall grant a petition for intervention in a proceeding and identify the petitioner in the record of the proceeding as a party if the petition either
 - (1) states facts demonstrating that a statute gives the petitioner an unconditional right to intervene in the proceeding; or
 - (2) states facts demonstrating that the petitioner's rights, duties, privileges, immunities, or other legal interests may be substantially prejudiced by the proceeding or a statute gives the petitioner a conditional right to intervene in the proceeding.
- The Hearing Examiner shall issue an order, at least 24 hours before the hearing, granting or denying each petition for intervention.

Hearings

- Regulated in conformity with any pre-hearing orders issued by the Hearing Examiner and in an informal manner without recourse to technical, common law rules of evidence applicable to civil actions in the courts
- Except as restricted by a limitation or prehearing order, to the extent necessary for full disclosure of all relevant facts and issues, the Hearing Examiner shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence

Hearing Examiner's Report

- Findings of fact, conclusions of law, and a recommended order
- Issued within 90 days of the latter: conclusion of hearing or submission of post-hearing papers
- If no objection filed within 15 days— Hearing Examiner's report shall become the final order of the Board

Appeal to the Board

- Notice of intent to file exceptions → within 15 days after report is served
- Exceptions - Shall identify the basis of the objection(s) with reasonable particularity and include
 - Any matters of procedure, fact, law, or policy to which the petitioner takes exception;
 - Identify that part of the Hearing Examiner's report to which objection is made
 - Designate by precise citation of page the portions of the transcript relied upon; and
 - State the grounds for the exceptions and include the citation of authorities
- Request oral argument
- Supporting Brief
- Answering Brief – limited to the questions raised in the exceptions/brief; may request oral argument
- Board Meeting

Final Order

- Affirm, Modify, or Dissolve the Hearing Examiner's Report
- Identify any differences between the final order and the Hearing Examiner's Report
- Include findings of fact or incorporate the findings of fact in the Hearing Examiner's Report by express reference to the report
- Issued within 60 days of the latter of: (1) Hearing Examiner's Report; (2) receipt of briefs; (3) close of oral argument
- Board may modify the final order before 30 days after the final order was issued or before a court assumes jurisdiction over the final order
- Petition for Judicial Review within 30 days

IEERB Research

As directed by the Indiana State Legislature
IEERB's Research Division provides statistical
data and other relevant data on the
resources of each school corporation.

Gateway

- Data collection will be completed using the DLGF Gateway: <https://gateway.ifionline.org/login.aspx>
- Items to be reported are salary and wage related benefits information. IEERB will open the Gateway from August 1, 2014 until February 1, 2015 for school corporations to submit their information and upload their ratified contract.
- School Corporations are required to submit the data along with their collective bargaining agreement to IEERB each year.

Uses of the information provided

- The Gateway site will be available for public viewing as well as research divisions to compare and contrast data.
- IEERB will issue a report on salary and benefit trends across the state.
- These data will be used for bargaining for comparables as well as providing information to legislators, citizens and others who have an interest in the data.

Thanks for Attending!

For more information on teacher collective bargaining, visit **www.in.gov/ieerb**

IEERB is a neutral agency and cannot provide legal advice.